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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 CR 117 (VEC)

5 MARVIN JEMAL,

6 Defendant.

7 -----x

8 New York, N.Y.

9 August 7, 2014

2:00 p.m.

10 Before:

11 HON. VALERIE E. CAPRONI,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the

16 Southern District of New York

CHRISTOPHER FREY

17 Assistant United States Attorney

18 BENJAMIN BRAFMAN

JOSHUA KIRSHNER

19 Attorneys for Defendant

20 ALSO PRESENT: MATTHEW TAYLOR, SA, FBI

MATTHEW GRADY, SA, FBI

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1 (In open court)

2 DEPUTY CLERK: United States of America versus Marvin
3 Jemal. All counsel, please identify yourselves for the record.

4 MR. FREY: Good morning, your Honor, Christopher Frey
5 for the government. I'm joined at counsel table by Special
6 Agent Matthew Taylor and Matthew Grady.

7 MR. BRAFMAN: Good morning, Ben Brafman and Josh
8 Kirshner for Mr. Jemal, who is present.

9 THE COURT: Good morning. I understand we're here
10 today for a guilty plea, is that correct?

11 MR. BRAFMAN: Yes, your Honor.

12 THE COURT: I have the signed plea agreement.

13 Mr. Jemal, your attorney told me that you wish to
14 plead guilty. Before that can happen, I need to ask you some
15 questions so that I can be sure that you're pleading guilty
16 because you are guilty and not for some other reason, and that
17 you fully understand the consequences of your plea.

18 Mr. Brantley, would you please swear in Mr. Jemal.

19 (Defendant sworn)

20 DEPUTY CLERK: Please state your full name and spell
21 your last name for the record.

22 THE DEFENDANT: Marvin Jemal.

23 THE COURT: Can you spell your last name for the
24 record, please?

25 THE DEFENDANT: J-E-M-A-L.

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1 THE COURT: Thank you. You may sit down if you would
2 be more comfortable.

3 THE DEFENDANT: May I stand up?

4 THE COURT: You can also stand up if you're more
5 comfortable. Whatever makes you more comfortable.

6 Mr. Jemal, how old are you?

7 THE DEFENDANT: I am 60 years old.

8 THE COURT: How far did you go in school?

9 THE DEFENDANT: High school.

10 THE COURT: Are you able to read and understand
11 English?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Are you now or have you recently been
14 under the care of a doctor or a psychiatrist?

15 THE DEFENDANT: No.

16 THE COURT: Have you ever been treated or hospitalized
17 for any mental illness or any type of addiction involving drug
18 or alcohol use?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Within the past 24 hours have you taken
21 any drugs, medicine or pills, or have you consumed any alcohol?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Is your mind clear today?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Your attorney told me that you wish to

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1 enter a plea of guilty, is that correct?

2 THE DEFENDANT: That is correct, your Honor, yes.

3 THE COURT: Have you had an opportunity to discuss
4 this case with your attorneys, including the consequence of
5 pleading guilty?

6 THE DEFENDANT: Yes, I have, your Honor.

7 THE COURT: Does either attorney have any doubt as to
8 Mr. Jemal's competence to plead guilty at this time?

9 MR. FREY: No, your Honor.

10 MR. BRAFMAN: No, your Honor.

11 THE COURT: On the basis of the defendant's responses
12 to my questions and my observations of his demeanor, I find
13 that he is fully competent to enter an informed guilty plea at
14 this time.

15 Mr. Jemal, before I accept your guilty plea, I'm going
16 to ask you a number of questions. But first I'm going to
17 describe certain rights that you have that you will be giving
18 up if you plead guilty. Please listen to me carefully. If you
19 don't understand any of my questions, or if you want to talk to
20 your attorney for any reason, just let me know. If you don't
21 understand my question, I will rephrase it. If you want time
22 to talk to your attorney, I will give you that time. Do you
23 understand?

24 THE DEFENDANT: Yes, thank you, your Honor.

25 THE COURT: Your attorney has said that you wish to

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1 plead guilty. You have the right to plead not guilty and to
2 persist in that plea. Do you understand that?

3 THE DEFENDANT: Yes, I do, your Honor.

4 THE COURT: You have the right to be represented by an
5 attorney at trial and at every other stage of this proceeding.
6 If you cannot afford an attorney, an attorney will be appointed
7 to represent you without cost to you. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: You have the right to a speedy and a
10 public trial by a jury on the charges against you which are
11 contained in the indictment. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: If you went to trial, you would be
14 presumed innocent and the government would be required to prove
15 beyond a reasonable doubt that you are guilty. You would not
16 have to prove that you were innocent at trial. Do you
17 understand that?

18 THE DEFENDANT: Yes, I do, your Honor.

19 THE COURT: If you went to trial, you would have the
20 right to see and hear all of the witnesses, and your attorney
21 could cross-examine the witnesses that the government calls.
22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: If you went to trial, your attorney could
25 object to the government's evidence. You would also have the

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1 right to present evidence on your behalf and the right to
2 compel witnesses to come to court to testify in your defense.
3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor, I do.

5 THE COURT: If you went to trial, you would have the
6 right to testify if you wanted to, but you could not be forced
7 to testify if you didn't want to. If you chose not to testify,
8 the jury would be told that it could not hold that against you.
9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: If there were a jury trial, the jury would
12 be composed of twelve jurors, and all twelve would have to
13 agree that you are guilty before you could be found guilty. Do
14 you understand that?

15 THE DEFENDANT: Yes, your Honor, I do.

16 THE COURT: If you were convicted at trial, you would
17 have the right to appeal that verdict. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: If you plead guilty and I accept that
20 plea, you will be giving up all of the rights that I have just
21 described, except your right to counsel, and you would be found
22 guilty just based on your plea of guilty. Do you understand
23 that?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Mr. Jemal, have you received a copy of the

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1 indictment 14 CR 117?

2 THE DEFENDANT: Yes, I have.

3 THE COURT: Have you read the indictment?

4 THE DEFENDANT: Yes, I have.

5 THE COURT: Have you discussed the indictment with
6 your attorney?

7 THE DEFENDANT: Yes, I have, your Honor.

8 THE COURT: You're charge with -- the count that you
9 will be pleading guilty to, you have been charged with bank
10 fraud. Do you understand that?

11 THE DEFENDANT: Yes, I do, your Honor.

12 THE COURT: Mr. Frey, what are the elements of the
13 offense?

14 MR. FREY: Yes, your Honor. To prove the crime of
15 bank fraud, the government would have to prove the following
16 elements beyond a reasonable doubt: First, there was a scheme
17 to defraud a bank; second, that the defendant executed or
18 attempted to execute the scheme with the intent to defraud the
19 bank; and third, that at the time of the execution of the
20 scheme, the bank had its deposits insured by the Federal
21 Deposit Insurance Corporation.

22 THE COURT: Mr. Jemal, if you do not plead guilty, the
23 government would have to prove each and every element of that
24 charge as described by Mr. Frey beyond a reasonable doubt at
25 trial. Do you understand that?

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1 THE DEFENDANT: Yes, I do, your Honor.

2 THE COURT: The maximum possible penalty for bank
3 fraud is 30 years imprisonment, five years of supervised
4 release, and a fine that is the greater of or the greatest of a
5 million dollars, twice the gross pecuniary gain derived from
6 the offense or the gross pecuniary loss to other persons from
7 the offense.

8 Is it the greater of those two or have I missed
9 something?

10 MR. FREY: The greatest of those.

11 THE COURT: A million dollars or twice pecuniary gain
12 or twice the pecuniary loss, up to five years of supervised
13 release, and a mandatory \$100 special assessment. Do you
14 understand the possible penalty?

15 THE DEFENDANT: Yes, your Honor, I do.

16 THE COURT: Supervised release means that you would be
17 subject to monitoring and supervision after you are released
18 from prison. Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: There are terms and conditions of
21 supervised release with which you would be required to comply.
22 If you do not comply with those terms and conditions, you could
23 be returned to prison without a jury trial. Do you understand
24 that?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: If you violate the terms or conditions of
2 supervised release and are sent back to prison, that new prison
3 term could be for part or all of the term of supervised
4 release, and you will not get credit for time previously served
5 in prison or time previously served on supervised release. Do
6 you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: As part of your sentence, I can also order
9 restitution to any person injured as a result of your criminal
10 conduct. Do you understand that?

11 THE DEFENDANT: Yes, your Honor, I do.

12 THE COURT: Mr. Jemal, are you a United States
13 citizen?

14 THE DEFENDANT: Yes, your Honor, I am.

15 THE COURT: If I accept your guilty plea and I adjudge
16 you to be guilty, that adjudication may deprive you of valuable
17 civil rights, such as the right to vote, the right to hold
18 public office, the right to serve on a jury, the right to
19 possess any type of firearm, and the right to hold certain
20 professional licenses. Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that there are
23 sentencing guidelines that I must consider in determining the
24 appropriate sentence in your case?

25 THE DEFENDANT: Yes, I do, your Honor.

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1 THE COURT: Have you talked to your lawyer about how
2 the guidelines apply in your case?

3 THE DEFENDANT: Yes, I have.

4 THE COURT: I'll have to calculate the guidelines
5 range and consider that range in determining what your sentence
6 will be. Do you understand that?

7 THE DEFENDANT: Yes, your Honor, I do.

8 THE COURT: I will not be able to determine what your
9 guidelines range will be until after a presentence report has
10 been completed by the United States probation office and you
11 and the government have had a chance to review and challenge
12 any aspect of that report. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Even after I calculate the guidelines
15 range for your case, I have the ability to impose a sentence
16 that is above or below that guideline range. Do you understand
17 that?

18 THE DEFENDANT: Yes, your Honor, I do.

19 THE COURT: In addition to determining what the
20 guideline range is, I will also have to consider sentencing
21 factors that are set out by federal law. Federal law requires
22 me to consider a number of different factors about you and
23 about the offense in determining the appropriate sentence in
24 your case. Do you understand that?

25 THE DEFENDANT: Yes, your Honor, I do.

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1 THE COURT: So even after I determine the sentencing
2 guideline range for your case, I must also consider these other
3 factors, and that might lead me to settle on a sentence that is
4 higher or lower than what the guidelines recommend. Do you
5 understand that?

6 THE DEFENDANT: Yes, your Honor, I do.

7 THE COURT: If your attorney or anyone else has
8 attempted to estimate or predict what your sentence will be,
9 their estimate or prediction could be wrong. Do you understand
10 that?

11 THE DEFENDANT: Yes, your Honor, I do.

12 THE COURT: It's perfectly appropriate for you and
13 your attorney to discuss how your sentence will be calculated,
14 but no one can give you any assurance what your sentence will
15 actually be. It is my job to determine what your sentence will
16 be, and I can't do that until all the things we have just
17 discussed have been done. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: So nobody, not even I, can predict what
20 your sentence will be. I say all this and I stress this,
21 because it's important for you to understand that if your
22 sentence is different from what your attorney or anyone else
23 has told you it might be, or if it's different from what you
24 expect or what it's laid out -- what the guidelines calculation
25 is laid out in the plea agreement, that will not be a basis to

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1 withdraw your plea. Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Would you like a moment?

4 THE DEFENDANT: No, I'm okay.

5 THE COURT: If you are sentenced to prison, there is
6 no parole, therefore, you cannot be released early. Do you
7 understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: I have been given a copy of the plea
10 agreement that was signed today. Did you sign this, Mr. Jemal?

11 THE DEFENDANT: Yes, I did, your Honor.

12 THE COURT: Have you read the agreement prior to
13 signing it?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: Did you discuss it with your attorney?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Are there any agreements, promises, or
18 understandings with the government that are not contained in
19 the plea agreement?

20 THE DEFENDANT: No, there are not.

21 THE COURT: Has anyone threatened or forced you to
22 plead guilty or to enter into the plea agreement?

23 THE DEFENDANT: No, they have not, your Honor.

24 THE COURT: Other than what is contained within the
25 plea agreement, has anyone promised you anything or offered you

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1 any inducements to plead guilty or to enter into the plea
2 agreement?

3 THE DEFENDANT: No, they have not.

4 THE COURT: Has anyone made a promise to you regarding
5 what your sentence will be?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Do you understand that part of the plea
8 agreement includes a waiver of the statute of limitations, so
9 that any crime that you could be prosecuted for today, if for
10 some reason the plea is overturned, the government will still
11 be able to pursue those cases against you. Do you understand
12 that?

13 THE DEFENDANT: Yes, your Honor, I do.

14 THE COURT: The plea agreement that you signed
15 contains an agreement or a stipulation between you and the
16 government regarding the sentencing guideline calculations that
17 you believe applies. That agreement is between you and the
18 government, and it is binding as to the government, but it does
19 not bind me. Do you understand that?

20 THE DEFENDANT: Yes, your Honor, I do.

21 THE COURT: So regardless of what you and the
22 government have agreed, I will make my own guidelines
23 calculation that is applicable to your case. Do you understand
24 that?

25 THE DEFENDANT: Yes, I do, ma'am.

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1 THE COURT: Are there appeal waiver provisions?

2 MR. FREY: There are, your Honor.

3 THE COURT: So under the plea agreement, you are
4 giving up your right to appeal the sentence and to collaterally
5 attack any sentence that's imposed if I sentence you within or
6 below the sentencing guidelines calculation that is contained
7 within the agreement. Do you understand that?

8 THE DEFENDANT: Yes, your Honor, I do.

9 THE COURT: In order to accept your guilty plea, I
10 have to be convinced that you are in fact guilty of this crime.
11 So Mr. Jemal, can you tell me in your own words what you did
12 that makes you guilty of the crime?

13 THE DEFENDANT: Your Honor, between in or about 2007
14 up through and including October 2009, I submitted invoices to
15 a bank in order to draw down on a credit agreement. At the
16 time I knew that certain of these invoices that I was
17 submitting were fraudulent, and that using them to draw down
18 the credit line was wrong and in violation of the law. The
19 bank is a member of the FDIC and is headquartered here in
20 Manhattan, New York. I deeply regret and am ashamed of my
21 conduct.

22 THE COURT: When you did these acts, when you
23 submitted these invoices, did you know that what you were doing
24 was wrong and against the law?

25 THE DEFENDANT: Yes, I did, your Honor.

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1 THE COURT: Did anyone threaten or coerce you or force
2 you to submit the false invoices?

3 THE DEFENDANT: No, they did not, your Honor.

4 THE COURT: Does either attorney wish me to inquire
5 further?

6 MR. FREY: No, your Honor.

7 MR. BRAFMAN: No, your Honor.

8 THE COURT: Mr. Brafman, do you know of any valid
9 defense that would prevail at trial or any reason why your
10 client should not be permitted to plead guilty?

11 MR. BRAFMAN: No, your Honor.

12 THE COURT: Do you believe there's an adequate factual
13 basis to support the plea?

14 MR. BRAFMAN: Yes, your Honor.

15 THE COURT: Mr. Frey, do you believe there's an
16 adequate factual basis to support a plea of guilty?

17 MR. FREY: I do, your Honor.

18 THE COURT: Mr. Jemal, how do you plead to Count Two
19 of the indictment, guilty or not guilty?

20 THE DEFENDANT: I humbly plead guilty, your Honor.

21 THE COURT: Are you pleading guilty voluntarily and of
22 your own free will?

23 THE DEFENDANT: Yes, I am, your Honor.

24 THE COURT: Mr. Jemal, the indictment to which you are
25 pleading guilty also includes a forfeiture allegation. Under

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1 the forfeiture allegation, the government has alleged that
2 you're required to forfeit all proceeds of the fraud scheme
3 that you're pleading guilty to. In the plea agreement you have
4 agreed to forfeit \$2,729,422.71. Do you agree to forfeit that
5 property?

6 THE DEFENDANT: Yes, I do, your Honor.

7 THE COURT: I find that there's an adequate factual
8 basis for the plea, that Mr. Jemal understands the rights that
9 he is giving up and is waiving those rights knowingly and
10 voluntarily. I find Mr. Jamal understands the consequences of
11 his plea, including the potential sentence that may be imposed,
12 and has agreed to forfeit the proceeds of the crime. Because I
13 find that the defendant's plea is entered knowingly and
14 voluntarily and is supported by an independent factual basis
15 for each and every element of the crime charged, I accept your
16 guilty plea.

17 I direct that a presentence investigation be conducted
18 by the United States probation office and that presentence
19 report be prepared.

20 Mr. Jemal, you're going to be interviewed by the
21 probation office as part of the presentence investigation
22 process. You can and should have your attorney with you during
23 that interview. If you say anything to the probation officer,
24 it's important that the information you provide be truthful and
25 accurate. The presentence report is very important to my

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1 decision as to what your sentence will be. You and your
2 attorney will have an opportunity to read the report and to
3 challenge it and to comment on it before I sentence you.

4 Mr. Brafman, please schedule an interview for
5 Mr. Jemal within the next 14 days.

6 MR. BRAFMAN: We will, your Honor.

7 THE COURT: Mr. Frey, please provide a description of
8 the government's case to probation within 14 days.

9 MR. FREY: I will, your Honor.

10 THE COURT: It's important once the presentence report
11 has been prepared that you read it carefully and discuss it
12 with your attorney before the date of sentencing. If there are
13 any mistakes in the report, point them out to your lawyer so he
14 can bring them to the attention of me before I impose sentence.

15 You and your attorney will also have a right to speak
16 at the time of sentence. Sentencing is scheduled for 90 days.

17 Mr. Brantley, do we have a date?

18 DEPUTY CLERK: November 5th, at 2:00 p.m.

19 THE COURT: Does that work?

20 MR. BRAFMAN: Yes, your Honor.

21 THE COURT: November 5th.

22 What's the bail status of the defendant?

23 MR. FREY: Your Honor, the defendant is currently on
24 bail. The government doesn't seek to modify bail conditions in
25 any way.

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1 THE COURT: That's fine.

2 Mr. Jemal, I remind you that if you fail to return at
3 the time of sentencing, that's a separate crime called bail
4 jumping. You don't want to do that, and you do want to return
5 at the time of sentencing. Pursuant to 18, USC, 3143(a), I
6 find by clear and convincing evidence that the current bail
7 conditions are adequate to ensure that the defendant won't flee
8 and to protect the community.

9 Is there anything else?

10 MR. FREY: Your Honor, in connection with the plea
11 agreement, the defendant also signed -- I should say the
12 parties signed a consent preliminary order of forfeiture. The
13 government can provide that to the Court and just ask that that
14 be entered at this time.

15 THE COURT: That's fine.

16 Mr. Brafman, anything else from you?

17 MR. BRAFMAN: No, I just wanted to say, Judge, that
18 your Honor had great patience with us in the beginning of the
19 case and allowed us the opportunity to work through large
20 volumes of discovery. It was very helpful and appreciated, and
21 it allowed us to come to a resolution without a trial that
22 would have been, in my judgment, unnecessary. But without that
23 time, I don't think we would have gotten to this point, so I
24 just wanted to thank you.

25 THE COURT: You're quite welcome.

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1 Anything else?

2 MR. FREY: Not from the government.

3 THE COURT: I will see you all in November. Thank
4 you.

5 MR. FREY: Thank you, your Honor.

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